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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
ILLINOIS COMMERCE COMMISSION)
ON ITS OWN MOTION,)
)
vs.)
) No. 05-0106
NORTHERN ILLINOIS GAS, d/b/a)
NICOR GAS COMPANY,)
Reconciliation of revenues)
collected under Coal Tar)
riders with prudent costs)
associated with coal tar clean)
up expenditures.)

Chicago, Illinois
February 2, 2007

Met, pursuant to notice, at 10:00.

BEFORE:

MS. LESLIE HAYNES, Administrative Law Judge

APPEARANCES:

SONNENSCHN, NATH & ROSENTHAL, by
MS. SARAH N. GALIOTO
233 South Wacker Drive
Suite 7800
Chicago, Illinois 60606
(312) 876-8000
for Northern Illinois Gas,
d/b/a Nicor Gas Company;

1 APPEARANCES (Continued:)

2 ILLINOIS COMMERCE COMMISSION, by
(Appearing telephonically)

3 MS. JANIS VON QUALEN

527 E. Capitol Avenue

4 Springfield, Illinois 62701

Appearing for The Illinois
5 Commerce Commission.

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-direct</u>	<u>Re-cross</u>	<u>By Examiner</u>
Diana Hathhorn			156	177	
(Testifying via telephone)					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
Nicor No. 6.0		155
Nicor Cross No. 1	157	176
Nicor Cross No. 2		192
Nicor Cross No. 3		195
Staff Redirect No. 1		159
Staff Cross No. 1		176

1 JUDGE HAYNES: Pursuant to the direction of the
2 Illinois Commerce Commission, I now call Docket
3 05-0106. This is the Illinois Commerce Commission on
4 its own motion versus Northern Illinois Gas Company,
5 d/b/a Nicor Gas Company, Reconciliation of revenues
6 collected under Coal Tar Riders with prudent costs
7 associated with coal tar clean-up expenditures.

8 May I have the appearances for the
9 record please.

10 MS. GALIOTO: Appearing on behalf of Northern
11 Illinois Gas Company, doing business as Nicor Gas,
12 Sarah Galioto of the law firm of Sonnenschein, Nath
13 and Rosenthal, 233 South Wacker, 7800, Sear's Tower,
14 Chicago, Illinois 60606.

15 MS. VON QUALEN: Janis Von Qualen on behalf of
16 the Illinois Commerce Commission, 527 East Capitol
17 Avenue, Springfield, Illinois 62701.

18 JUDGE HAYNES: Is there anyway to get closer to
19 a microphone?

20 MS. VON QUALEN: Let me try a different
21 microphone.

22 JUDGE HAYNES: Okay.

1 MS. VON QUALEN: Is this better?

2 JUDGE HAYNES: Yes.

3 Are there any further appearances?

4 (No response.)

5 Let the record reflect, there are

6 none.

7 Okay. First, I believe Nicor had an

8 additional exhibit?

9 MS. GALIOTO: Yes, your Honor.

10 At the beginning of yesterday's

11 hearing, we discussed the submission into the

12 evidentiary record of data request responses between

13 the parties. And at that time, we identified the

14 following data request: NG 1.01 through NG 1.08.

15 We would also like to add one

16 additional data request to that group, and that is

17 DLH 2.01. And we would request that the entirety of

18 those data requests be marked as Nicor 6.0.

19 JUDGE HAYNES: Is there any objection from

20 Staff?

21 MS. VON QUALEN: No.

22 JUDGE HAYNES: Okay. Nicor Exhibit 6.0 is

1 admitted.

2 (Whereupon, Nicor Exhibit
3 No. 6.0 was admitted into
4 evidence.)

5 JUDGE HAYNES: Have you filed this on e-docket?

6 MS. GALIOTO: As we talked yesterday, we talked
7 about filing that on Monday.

8 JUDGE HAYNES: Okay. Anything else or are we
9 ready for redirect?

10 MS. GALIOTO: Nothing further, your Honor.

11 Ms. Hathhorn, I would like to remind
12 you, you are still under oath. Ms. Von Qualen, you
13 can go ahead.

14 MS. VON QUALEN: First, I'm handing the witness
15 a document, which I believe Mr. Griffin is in the
16 room in Chicago. And, Mr. Griffin, would you hand
17 the document to Ms. Galioto and Judge Haynes please.

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1 (Witness previously sworn.)

2 DIANA HATHHORN, CPA

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 REDIRECT EXAMINATION

6 BY

7 MS. VON QUALEN:

8 Q Ms. Hathhorn, do you recall yesterday being
9 questioned about certain hypotheticals by
10 Ms. Galioto?

11 A Yes, I do.

12 Q Would you look at the handout that I just
13 handed you and look at the hypotheticals that
14 Ms. Galioto handed you yesterday.

15 In particular, if you would look at
16 example Roman Numeral IV-B on Page 8.

17 JUDGE HAYNES: You mean of Nicor's exhibit?

18 MS. VON QUALEN: Yes.

19 Right now I asked her to turn her
20 attention to the hypothetical that Ms. Galioto handed
21 to her yesterday and she also has a response to the
22 document that I believe Mr. Griffin has handed you,

1 Judge, and Ms. Galioto as well.

2 MS. GALIOTO: Could you give me one moment
3 while I get yesterday's hypothetical?

4 JUDGE HAYNES: Sure.

5 MS. GALIOTO: Do you need a copy of it?

6 JUDGE HAYNES: I have it.

7 MS. GALIOTO: What page are you on of
8 yesterday's hypothetical?

9 MS. VON QUALEN: Page 8.

10 JUDGE HAYNES: Since we're going back to this
11 exhibit and we used it so much yesterday, I think for
12 the record, it should be marked as Nicor
13 Cross-Exhibit 1.

14 MS. GALIOTO: Okay.

15 (Whereupon, Nicor Cross Exhibit
16 No. 1 was marked for
17 identification.)

18 MS. GALIOTO: We'll file that on Monday, as
19 well.

20 JUDGE HAYNES: Do you have a hard copy without
21 writing on it?

22 MS. GALIOTO: I have it on my computer. I can

1 print a clean copy out. It won't have -- it won't
2 recognize the change that we talked about yesterday,
3 which was that the annual charges that the ratepayers
4 who pay under rate base would be the inflow --

5 JUDGE HAYNES: Sure.

6 MS. GALIOTO: -- so with that, I wouldn't
7 change that.

8 JUDGE HAYNES: Okay. That's fine.

9 MS. VON QUALEN: It's very difficult for us to
10 hear Ms. Galioto from Springfield.

11 MS. GALIOTO: Is that better?

12 MS. VON QUALEN: Much better.

13 BY VON QUALEN:

14 Q Ms. Hathhorn, I'm going to ask you a series
15 of questions which change some of the assumptions in
16 that exhibit on Page IV-B.

17 We are accepting Assumptions 1 through
18 5 as listed on the first page of Nicor's
19 Cross-Exhibit 1.

20 But we are changing the sales proceeds
21 from in the hypothetical that Nicor gave yesterday,
22 was \$800,000.

1 Today in my hypothetical, the proceeds
2 will be \$400,000. We're still assuming that the
3 property is sold at Year 10, and we are still
4 assuming that there is a rate case in Year 8.

5 Have you performed the calculations to
6 show what would be the effects on ratepayers under
7 rate base treatment?

8 A Yes, I have.

9 In the first scenario, this assumes
10 the same rate base intervals of Year 0, 8, and 10
11 that was used in Nicor's example IV-B.

12 And under rate base treatment, the net
13 cost to ratepayers is the same, which is a negative
14 \$280,000 cost, and under the proposed Rider 12
15 treatment, the cost increases to a negative \$600,000
16 for ratepayers.

17 Q Thank you.

18 Now, I would turn your attention to
19 the second page of the exhibit, which --

20 MS. VON QUALEN: Judge, I guess I would like to
21 have marked as Staff Redirect Exhibit 1 for ease of
22 reference.

1 (Whereupon, Staff Redirect
2 Exhibit No. 1 was marked for
3 identification.)

4 BY MS. VON QUALEN:

5 Q In Exhibit 2 of Staff Redirect Exhibit 1, I
6 would like you to assume that the proceeds remain at
7 \$400,000, that the cost of the property or the
8 investment remains at \$1 million, but assume that
9 there's a rate case in the Year 0 at the same years
10 that the property bought and that there was another
11 rate case in Year 4.

12 Have you performed the calculations
13 for rate base treatment under that scenario?

14 A Yes, I have.

15 Under rate base treatment, the cost
16 for ratepayers would be a total of \$416,000 cost, and
17 under ratepayers Rider 12 proposed treatment would be
18 a negative \$600,000 cost.

19 Q Thank you.

20 Now, if you would look at Page 3 of
21 Staff Redirect Exhibit 1, Scenario 3, assuming that
22 there's rate base -- under the assumption that

1 there's rate base treatment, let's assume, that the
2 purchase price is \$1 million. Assume that rate case
3 intervals are the same as in our last hypothetical;
4 Year 0 and Year 4.

5 Have you made the calculations for
6 what would be the cost to ratepayers under rate base
7 treatment?

8 A Yes. This would be the same as the
9 previous scenario, a negative \$416,000 cost.

10 Q Now, assuming the purchase price would
11 be -- assuming that the purchase price under Nicor's
12 proposed Rider 12 treatment would be \$1.2 million, so
13 the assumption for the purchase price has changed,
14 but the other assumptions remain the same intervals
15 for rate cases and the same sales price.

16 What would be the effect for
17 ratepayers under Nicor's proposed expense treatment?

18 A That would be a negative \$800,000 cost.

19 JUDGE HAYNES: I'm confused.

20 Wouldn't the rate base annual costs go
21 up then, as well, if the purchase price went up to
22 1.2 million?

1 MS. VON QUALEN: Judge, the assumption under
2 the rate base treatment would not change.

3 JUDGE HAYNES: I understand.

4 But wouldn't they ask for more of a
5 higher purchase price in their rate base? Why would
6 they not ask for more money in the rate base?

7 THE WITNESS: This is Ms. Hathhorn.

8 JUDGE HAYNES: Auh-huh.

9 THE WITNESS: The reason that there are two
10 different costs shown in this scenario is to reflect
11 the fact that when property is purchased under a
12 rider mechanism, there is no incentive for bargaining
13 down the purchase price since the utility knows it
14 will receive dollar-for-dollar cost recovery.

15 So this scenario is to reflect the
16 fact that a price difference for the same piece of
17 property could exist being that 1.2 million under the
18 rider for the same \$1 million in rate base since the
19 rider treatment would give the utility no incentive
20 to decrease the purchase price.

21 JUDGE HAYNES: Couldn't Staff, in their
22 prudence review under Rider 12, make an argument that

1 they paid too much for the property?

2 MS. VON QUALEN: Yes, they could.

3 JUDGE HAYNES: Okay. Sorry. Go ahead. I was
4 just confused about the different purchase prices.

5 BY MS. VON QUALEN:

6 Q Ms. Hathhorn, how would Staff be able to
7 make an argument about the prudence of a purchase
8 price? What facts would Staff need for that?

9 A That would probably be a difficult argument
10 for Staff to make because Staff would have to spend
11 considerable time researching the real estate markets
12 surrounding the property beyond just reviewing the
13 appraisal in order to have a sound basis for
14 questioning a purchase price.

15 Q Ms. Hathhorn, we looked at three additional
16 hypotheticals, additional to the numerous ones that
17 Nicor had you review yesterday.

18 Would it be possible to have any other
19 hypotheticals about these two different scenarios,
20 these two different treatments of costs?

21 A Yes.

22 As my additional scenarios show, the

1 net cash flow to ratepayers and also utilities
2 changes with the increments of rate cases, the price
3 of the investment, the eventual sale proceeds and
4 timing of that sale, the rate of return to the
5 utility, the rate of depreciation. There's virtually
6 limitless scenarios which we could demonstrate using
7 hypotheticals.

8 Q Ms. Hathhorn, have you ever used this type
9 of cash-flow analysis to make a recommendation in
10 other coal tar reconciliations?

11 A No, I have not.

12 Q Would you use this type of analysis in a
13 rate case?

14 A No, I would not.

15 It's not sound policy for the
16 Commission to determine issues based on future cash
17 flows. It's tantamount to making a decision based on
18 a single issue, which the Commission strongly
19 discourages.

20 MS. GALIOTO: Your Honor, I'm going to object
21 to the extent that answer reaches a legal conclusion.

22 JUDGE HAYNES: Do you have a response,

1 Ms. Von QUALEN?

2 MS. VON QUALEN: I don't believe that she
3 reached a legal conclusion.

4 I believe all she discussed was the
5 fact that this would be single-issue rate-making.
6 And I think that's a factual issue. We can all see
7 there is only one single issue discussed under rate
8 base treatment in the hypothetical.

9 JUDGE HAYNES: I'll let the answer stand.

10 BY MS. VON QUALEN:

11 Q Ms. Hathhorn, would you recommend that the
12 Commission rely on this for a hypothetical cash-flow
13 analysis when making a determination in this case?

14 A No, I would not because not only can the
15 outcome change based on the assumptions, which are
16 not based on the facts of this case, the economics
17 can and will change on a number of factors;
18 therefore, I do not believe it would be sound for the
19 Commission to use the net cash-flow analysis to
20 determine the right decision in this case.

21 Q Ms. Hathhorn, do you recall yesterday when
22 Ms. Galioto asked you a question about your testimony

1 where you discussed a \$1 million property going into
2 rate base?

3 A Yes, I do.

4 Q What was the purpose of your testimony?

5 A The purpose of my testimony regarding rate
6 base treatment is to show how the Commission finds
7 investments made by the utility all the time
8 (phonetic).

9 Property is owned by the utility and
10 earns the return, rather than dollar-for-dollar
11 reimbursement as in the rider, and keeps the risk and
12 reward of property ownership properly on the utility
13 rather than shifting that burden to ratepayers.

14 Q Do you recall yesterday being asked if it
15 was possible that the utility would not know at the
16 time of a rate case that a piece of property would
17 need to be purchased?

18 A Yes, I do.

19 Q Could you give an explanation about what
20 the effects of that would be.

21 A As I said yesterday, this scenario is
22 possible; however, a utility considers many factors

1 in planning for a rate case.

2 Nicor has approximately \$3.9 billion
3 in gross plant (phonetic) in its last rate case to
4 consider.

5 So, therefore, the \$50,500 house that
6 we're talking about in this case would be but one
7 factor to consider.

8 Then once rates are set from a rate
9 case, the utility is not going to receive the exact
10 amount of cash, which those rates -- they receive the
11 cash the rates produce, but it will not exactly match
12 their costs and investment costs.

13 The utility may experience unexpected
14 costs. They may experience decreases in costs, and
15 also could experience increases in revenue; for
16 example, for colder weather than anticipated in the
17 rate case.

18 So none of the cash flow items that I
19 just mentioned are ever flowed through a rider to
20 make a utility whole. Otherwise, we would never have
21 base rates, and then every cost would be subject to a
22 rider.

1 Q Ms. Hathhorn, is that -- so what is the
2 effect that exact costs are not flowed through in a
3 rate case as opposed to in a rider?

4 A This unsynchronization in the changes in
5 the costs and revenue which occur continually in
6 utility's operations, it's often referred to as
7 regulatory lags. It's a part of utility rates and
8 rate-making decisions, costs can increase or decrease
9 both in favor of the ratepayer or the utility.

10 Q The concept of regulatory lags, looking at
11 the hypothetical that we looked at this morning and
12 were looked at yesterday when there were two
13 scenarios, rate base treatment scenarios, in Nicor's
14 proposed Rider 12 treatment, does regulatory lags
15 relate to both of those scenarios?

16 A It would reflect the rate base calculation.
17 The rider provides the dollar-for-dollar cost
18 recovery.

19 Q Thank you.

20 Do you recall Ms. Galioto asking you a
21 number of questions regarding Nicor's ability to
22 either slow the cost of land purchased solely for

1 remediation through the Coal Tar Rider or lose it in
2 rate base?

3 A Yes, I do.

4 Q What is your proposal for this?

5 A My recommendation is that these costs
6 should be put in rate base because they represent
7 future economic benefit.

8 Q What do you mean by a "future economic
9 benefit"?

10 A I address the topic of future economic
11 benefit in my testimony, as well as my response to my
12 Nicor's Gas' data request response of myself,
13 No. 2.02.

14 And in that response, I discuss
15 Financial Concept Statement No. 6, Paragraph 28 and
16 30.

17 And Paragraph 30-A, The future
18 economic benefit in a business enterprise eventually
19 rebuilds, and that cash then flows to the
20 organization.

21 Paragraph 30 goes on to state that:
22 As of other than cash, for example, real property,

1 benefiting the entity by being exchanged for cash or
2 other business services by being used to produce
3 business services or services, or otherwise increase
4 the value of other assets or by being used to settle
5 liabilities; therefore, economic benefit is not
6 premised upon an asset being sold for more than the
7 purchase price.

8 MS. GALIOTO: Your Honor, I'm going to object
9 and move to strike that answer. The entire question
10 and answer was beyond the scope of my
11 cross-examination.

12 I did not ask Ms. Hathhorn yesterday
13 about her interpretation of the accounting rules upon
14 which she relied.

15 The extent of my questioning with
16 regard to the accounting rules was whether or not
17 they address cost-recovery methods. She indicated
18 they do not. That was the extent of it.

19 Her explanation as to what she
20 understands them to mean is, therefore, beyond the
21 scope of my cross.

22 MS. VON QUALEN: May I respond?

1 JUDGE HAYNES: Yes.

2 MS. VON QUALEN: This is responsive to the
3 cross-examination that Ms. Galioto performed on
4 Ms. Hathhorn yesterday in regards to multiple
5 questions that she asked about the mechanics of
6 Ms. Hathhorn's proposal.

7 If you will recall, there were a
8 number of questions about when Nicor would try to
9 recover the cost of land purchased solely for
10 remediation in either a rate case or flow it through
11 the tariff.

12 Through those questions, I believe,
13 Ms. Galioto generated some confusion about exactly
14 what Ms. Hathhorn was proposing and how that proposal
15 would affect Nicor's ability to recover and their
16 ability to know how they could recover.

17 This question goes directly to what
18 her proposal is, to what the effect would be on Nicor
19 and its ability to know how to recover these costs.

20 JUDGE HAYNES: Objection overruled.

21 BY MS. VON QUALEN:

22 Q Ms. Hathhorn, are you recommending that

1 Nicor includes all such costs; that is, costs for
2 when it's purchased solely for the purpose of
3 remediation in its annual reconciliation so that the
4 future economic benefit issues could be decided
5 there?

6 A No, I am not.

7 Q In your opinion, would that be necessary?

8 A No.

9 Q Why not?

10 A I don't believe it would be necessary
11 because with purchases of land and property, it would
12 only be in extremely unique situations where there
13 would be no future economic benefit, rather, there
14 would be no ability to sell the property in the
15 future.

16 Q If the Commission adopted your position, do
17 you think it would be difficult for Nicor to
18 determine whether it should include the costs for
19 land bought solely for the purposes of remediation in
20 its Coal Tar Rider?

21 A No, I do not.

22 Q Do you recall Ms. Galioto asking you some

1 questions about the timing of rate cases vis-a-vis
2 the purchase of land for coal tar remediation?

3 A Yes, I do.

4 Q Would adoption of your recommendation
5 likely change the manner in which Nicor determines
6 when rate bases are needed?

7 A I do not think that's a likely outcome of
8 adopting my recommendation.

9 As I stated a moment or two ago, in
10 Nicor's last general rate case, it had \$3.9 billion
11 of gross plant to consider in a total rate base of
12 approximately \$1.2 billion.

13 So it's easy to see how, while the
14 importance of \$50,500 asset would not likely be the
15 deciding factor on when Nicor chooses to file a rate
16 case, they have a multitude of factors to consider
17 when coming in; one of which may be the regulatory
18 lag, which I discussed earlier.

19 If the utility's costs have gone down
20 since their last rate case, they're in no need to
21 come back in. So such a circumstance could outweigh
22 the fact that they purchased property, but are not

1 able to put it immediately into rate base.

2 These types of balancing of costs and
3 recovery of costs go on continually, and so I do not
4 see how adoption of my recommendation would change
5 that process.

6 Q Thank you.

7 Do you recall being questioned
8 yesterday about what you relied on in forming your
9 position in this case?

10 A Yes, I do.

11 Q In your answer you included the UE Order in
12 Docket 04-0108.

13 Can you explain why you consider that
14 order when arriving at your position.

15 MS. GALIOTO: Your Honor, I'm going to object
16 again.

17 Once again, this is beyond the scope
18 of my cross-examination. I did not ask her a single
19 question about the UE Order.

20 I asked her solely what she relied
21 upon for purposes of demonstrating that those
22 accounting rules do not address cost recovery.

1 I asked her other than her saying what
2 she relied upon, there were zero questions about that
3 topic.

4 I object to her now coming in and,
5 basically, giving direct testimony as to why she
6 thinks that case was important.

7 JUDGE HAYNES: Ms. Von Qualen, do you have a
8 response?

9 MS. VON QUALEN: Yes, I do. Thank you.

10 Ms. Galioto asked Ms. Hathhorn what
11 she relied on and asked her several questions about
12 what she relied on in coming to her determination in
13 this docket. Ms. Hathhorn's response included that
14 she relied on in the UE Order.

15 In addition, Judge, your question
16 centered somewhat upon what Ms. Hathhorn relied on in
17 coming to her positions. So I do believe it is
18 appropriate redirect examination.

19 JUDGE HAYNES: Objection sustained.

20 MS. VON QUALEN: Staff has no further questions
21 on redirect.

22 MS. GALIOTO: Can we have just a moment to

1 talk?

2 JUDGE HAYNES: Sure. We'll take a five-minute
3 break.

4 (Whereupon, a recess was taken.)

5 JUDGE HAYNES: Okay. Do you have recross for
6 the witness?

7 MS. GALIOTO: I just have a couple questions.

8 JUDGE HAYNES: Okay.

9 MS. VON QUALEN: Just before, I omitted to ask
10 for admittance into evidence Staff Exhibit 1. I
11 would like that to be admitted into evidence.

12 JUDGE HAYNES: You know, Nicor never asked for
13 Cross-Exhibit 1 to be admitted into evidence.

14 MS. GALIOTO: I'm fine with them either both
15 going in or both going out.

16 JUDGE HAYNES: Nicor Cross-Exhibit 1 and Staff
17 Redirect Exhibit 1 are admitted into the record.

18 (Whereupon, Nicor Cross No. 1
19 and Staff Redirect Exhibit
20 No. 1 were admitted into
21 evidence.)

22 MS. VON QUALEN: Thank you.

1 JUDGE HAYNES: I'm having a really hard time
2 hearing you again in Springfield.

3 MS. VON QUALEN: Is this better?

4 JUDGE HAYNES: Yes. Go ahead with your recross.

5 RECROSS EXAMINATION

6 BY

7 MS. GALIOTO:

8 Q Ms. Hathhorn, you were asked several
9 questions with regard to whether the timing of rate
10 cases would be impacted by remediation. And you
11 indicated that given that Nicor's rate base is,
12 obviously, significantly larger than the cost of any
13 single remediation property, that your belief was
14 that the timing of rate cases would not be impacted.

15 Do you recall those questions?

16 A Yes, I do.

17 Q Isn't it true that Nicor would have, or any
18 utility, for that matter, would have an incentive to
19 delay the purchase of a piece of property needed
20 solely for the purpose of remediation until a rate
21 case was going to be filed to ensure that the
22 property would be added to rate base?

1 A Well, if I understand it, Nicor has many
2 sites that need remediation, and the remediation
3 cannot occur all at the same time.

4 So Nicor, or any other utility with
5 multiple sites, continually has to analyze which site
6 needs to be addressed first, which are a priority,
7 and they all have different clean-up costs.

8 So Nicor would have the ability to
9 decide when it would work on a site which would need
10 land to be purchased; nearly not all sites need land
11 to be purchased for remediation. And further, the
12 regulatory lag that I spoke of earlier, could
13 possibly offset the delay in putting a piece of
14 property in -- if Nicor had to buy a piece of
15 property but did not have the opportunity to
16 immediately file a rate case.

17 Q Ms. Hathhorn, didn't you say in your
18 testimony today that there would be no regulatory lag
19 impact on Rider 12 recovery?

20 A I was speaking to the dollar-for-dollar
21 cost recovery affecting Nicor, and the fact that it
22 immediately receive recovery of the investment and

1 then flows it back through the rider.

2 Q If I understand your previous answer
3 correctly, you do recognize that there would be an
4 incentive for a utility to, perhaps, delay the
5 remediation of one piece of property in order to time
6 the purchase of a piece of land needed solely for the
7 purpose of remediation with an upcoming rate case,
8 and, perhaps, expedite the remediation of a different
9 property? You did recognize that impact could result
10 from your proposal, correct?

11 A That opportunity does exist.

12 Q You also talked about the mechanics of your
13 proposal and how it would work. And, correct me if
14 I'm wrong, but I understood you to testify that Nicor
15 should routinely put the cost of property purchased
16 solely for the purpose of remediation into rate base,
17 sort of as its default recovery mechanism, and that
18 only in very extreme, unique circumstances -- and I
19 believe yesterday you described those circumstances
20 as acts of God -- when the property is virtually
21 destroyed, would there be no probable future economic
22 value that the property should then go into Rider 12;

1 is that correct?

2 A That sounds like a fair summary.

3 Q So would it be fair to say that Staff's
4 position is that these costs should be recovered
5 under rate base 99.99 percent of the time?

6 A No. The facts of the specific site would
7 determine that.

8 I was speaking only in my experience
9 of an accountant of how land would have no future
10 value, and that is why in the accounting world it
11 does not depreciate in the books of many
12 institutions.

13 So if you're just generally saying
14 99.9 to say that the majority would have a future
15 benefit and therefore should go on rate base, I could
16 go along with that.

17 Of course, if we're citing specific
18 percentages, I would not agree with that.

19 Q What I'm attempting to do is give some type
20 of a quantifiable estimate of how many times you
21 believe that these costs would be properly in rate
22 base and how many times they would be properly under

1 Rider 12.

2 And because your testimony was that it
3 would only be in the rare, unique instance of an act
4 of God that these properties would probably be
5 recovered under Rider 12, I'm simply indicating that
6 .01 percent to recognize those instances where an act
7 of God would possibly come into play.

8 Would you agree with that?

9 A I'm clear. Although, my position is still
10 being probed because what I testified is that this
11 land and property is very likely to have a future
12 economic benefit because it could be sold for
13 proceeds to the utility. And it's unlikely that the
14 situation would be the reverse, in that nothing could
15 be sold, and therefore, it would have no benefit and
16 be eligible for a rider.

17 Now there's no way, sitting here
18 today, I can know how often these are going to happen
19 in the future based on the site-specific purchases of
20 Nicor.

21 Q Turning to Staff Redirect Exhibit 1.0,
22 would it be correct to state that that exhibit does

1 not show the impact on the utility in terms of the
2 utility's ability to fully recovery its costs under
3 each of your scenarios?

4 A Staff Redirect Exhibit 1 reflects only the
5 cost to ratepayers.

6 MS. GALIOTO: Nothing further.

7 JUDGE HAYNES: Any redirect?

8 MS. VON QUALEN: No.

9 JUDGE HAYNES: Okay. Thank you, Ms. Hathhorn.

10 Has everybody moved all the exhibits
11 that they plan on moving, none of the cross exhibits
12 yesterday?

13 MS. GALIOTO: You know what, we pretty much
14 published those through the witness' testimony. I
15 actually -- I think it would be beneficial for
16 everyone's reference to have them in the record.

17 But, Jan, do you have on objection to
18 that? I think they're on the record due to the
19 transcript anyway.

20 MS. VON QUALEN: Which documents are you
21 referring to?

22 MS. GALIOTO: Each of the documents we used for

1 our cross -- that we distributed yesterday in asking
2 Ms. Hathhorn questions under cross. So that would
3 include -- and I can put the list together.

4 That would include the testimony of
5 Scott Struck in the generic proceeding order, the
6 transcript of his testimony. It would include the
7 portion of the universal -- or the uniform system of
8 accounts that addresses the fact that the Commission
9 does not look at that for rate-recovery issues. It
10 would include -- it was just those three documents
11 yesterday.

12 Can I have a moment just to go through
13 my notes?

14 JUDGE HAYNES: Sure.

15 MS. GALIOTO: I know we asked questions about
16 Rider 12, I would assume the Commission would be
17 recognizing Rider 12 anyway. We can take
18 administrative notice of that or move that into the
19 record.

20 JUDGE HAYNES: I don't think Rider 12 needs to
21 be an exhibit.

22 MS. GALIOTO: I didn't think it did either.

1 JUDGE HAYNES: Let's take them one by one.

2 So one would be the testimony of Scott

3 Struck from the generic proceeding.

4 Does Staff object to that?

5 MS. VON QUALEN: Yes, Staff objects to that

6 testimony going into the record.

7 JUDGE HAYNES: I think that the record probably

8 has enough in it that we don't need to include the

9 whole document in the record.

10 MS. GALIOTO: Okay.

11 And the transcript from the generic

12 proceeding.

13 MS. VON QUALEN: I object to the transcript

14 going into the record.

15 JUDGE HAYNES: I think the same is probably

16 true that I won't admit that either. I don't know

17 that there was another one.

18 MS. GALIOTO: No other testimony or transcript.

19 It was just the page from the uniform system of

20 accounts. I think that was the only other thing.

21 That's the only thing I'm seeing here in my notes.

22 But, again, we did publish that through the witness'

1 testimony, as well.

2 JUDGE HAYNES: Okay. Did you want to move that
3 into the record or not?

4 MS. GALIOTO: Sure. I can move just this one
5 page into the record.

6 JUDGE HAYNES: Staff?

7 MS. VON QUALEN: I don't believe it's necessary
8 for the record. She already read that portion of it
9 into the record. And I'm not sure why one section of
10 the USOA would be in when many of the sections of the
11 USOA have been discussed and put into testimony.

12 JUDGE HAYNES: Okay. Then, Staff, do you have
13 extra copies of your direct exhibit? Then I will
14 look at Nicor's Cross-Exhibit Monday with the other
15 late-filed exhibits.

16 MS. VON QUALEN: Judge?

17 JUDGE HAYNES: Yes.

18 MS. VON QUALEN: There is one other matter I
19 wanted to raise when it would be convenient.

20 JUDGE HAYNES: Okay.

21 MS. VON QUALEN: I would ask leave to call
22 Staff Witness, Scott Struck, as a rebuttal witness

1 based on the cross-examination of Diana Hathhorn on
2 Mr. Struck's testimony in the generic proceeding,
3 Dockets 91-0080 through 91-0015.

4 MS. GALIOTO: Your Honor, I, obviously, object.

5 Would you like to hear?

6 JUDGE HAYNES: Yes.

7 MS. GALIOTO: Number one, the sole purpose of
8 questioning Ms. Hathhorn with regard to Mr. Struck's
9 testimony from the generic proceeding was to test her
10 understanding of Staff's position as it was set forth
11 in that case.

12 She testified in her direct testimony
13 as to what she understood to be Staff's testimony in
14 that case. And her understanding was one of the
15 basis for her recommendations in this case.

16 So all I did was show her the actual
17 documents from that case to see whether or not they
18 matched, what her understanding was as she
19 represented it in this case.

20 So I believe any direct examination of
21 Mr. Struck would be going beyond the scope.

22 Number two, Mr. Struck testified under

1 oath pursuant to cross-examination with privity of
2 the parties existing. Staff was a party in that
3 case. Nicor was a party in that case. From what I
4 can tell, and I don't have the exact order in front
5 of me, so I can't tell you exactly what parties
6 participated, there were a large number of parties in
7 that case, and everyone had the opportunity to
8 provide their positions and be cross-examined by
9 that.

10 If he comes forward today to in any
11 way change what he said under oath on the record in
12 the generic proceeding order, I would highly object
13 because I think it is a modification of his testimony
14 in that case to fit Staff's purpose and intent in
15 this docket. That's highly inappropriate and
16 irregular.

17 JUDGE HAYNES: For what purpose would you call
18 Mr. Struck?

19 MS. VON QUALEN: Judge, you will recall that
20 during the cross-examination of Staff Witness
21 Hathhorn, Nicor asked her questions and had her read
22 into the record portions of Mr. Struck's prefilled

1 testimony and portions of the transcript of his
2 testimony at the hearing of the generic proceeding.

3 Although, Ms. Galioto can characterize
4 Ms. Hathhorn as relying on Staff's testimony in the
5 generic proceeding, in fact, if you look at her
6 testimony, she discussed that position during the
7 proceeding.

8 And if you'll recall, I objected very
9 strongly yesterday to her being made to read that
10 testimony when there was no foundation to it laid
11 that she had ever read the testimony before. And at
12 that time I objected that her position did not rely
13 on the testimony of Mr. Struck.

14 Her opinion was based upon the order
15 and her understanding of financial statements in
16 Concept No. 6, particularly Paragraph 25.

17 JUDGE HAYNES: I recall.

18 MS. VON QUALEN: May I continue my argument?

19 JUDGE HAYNES: I recall the conversation that
20 went on yesterday. I'm asking for what purpose you
21 would call him today?

22 MS. VON QUALEN: Nicor has opened the door to a

1 full -- to a discussion of what Mr. Struck's position
2 was in that case.

3 There seems to now be some confusion
4 about not about what the words in the testimony were,
5 but about what his analysis was and what his thinking
6 was, which is what Ms. Hathhorn states based her
7 position on.

8 I believe that since Nicor has opened
9 the door and has impeached Ms. Hathhorn using this
10 testimony, Staff would be given the opportunity to
11 clear that up.

12 I'm aware that the presentation of a
13 live witness at a cross hearing is very unusual, and
14 outside the normal procedure used in Commission
15 hearings.

16 JUDGE HAYNES: You had the opportunity today on
17 redirect to rehabilitate your witness after the
18 impeachment by, as you just called it, by the Nicor
19 attorney.

20 MS. VON QUALEN: Judge, my witness cannot
21 testify as to Mr. Struck's analysis and his state of
22 mind when he filed testimony back in 1991. I'm sure

1 Ms. Galioto would object to that. And I would not
2 ask Ms. Hathhorn to tell me what was going on in
3 Mr. Struck's mind when he offered that testimony.

4 MS. GALIOTO: Your Honor, if I could respond to
5 that.

6 JUDGE HAYNES: Sure.

7 MS. GALIOTO: The purpose of my questioning was
8 not to get to what was going on in Mr. Struck's mind.

9 He put on paper, under oath, what his
10 position was in that case. And I was entitled to
11 examine Ms. Hathhorn to see if she had read it, and
12 whether or not she had a correct understanding of it
13 when she said in this case what she understood
14 Staff's position to be.

15 To the extent that her position in
16 this case is based on subsequent conversations with
17 Mr. Struck in which he indicated to her that his
18 intent was somewhat different than what he put on
19 paper in that case, that is hearsay, and I move to
20 strike her testimony as to her understanding of
21 Staff's position as being based on hearsay.

22 JUDGE HAYNES: If your purpose for calling

1 Mr. Struck is to rehabilitate Ms. Hathhorn's
2 testimony, I'm not going to grant it.

3 MS. VON QUALEN: My purpose for calling
4 Mr. Struck as a rebuttal witness regarding the --
5 what was put into the record yesterday about his
6 testimony and his analysis and what Staff's position
7 was in the generic proceeding.

8 It is a can of worms that has opened
9 up. But Nicor has opened this up, and I believe it
10 would not result in a fair and complete record, if
11 Staff is not given the opportunity to rebutt what
12 Nicor has chosen to put into the record.

13 JUDGE HAYNES: I think that if Staff is
14 concerned about proper representation of Mr. Struck's
15 position in the generic proceeding, the proper method
16 to cure that would be to include his testimony from
17 that proceeding in the cross-examination of
18 Mr. Struck under oath from that proceeding, not to
19 allow him to to testify here today.

20 MS. VON QUALEN: I disagree because that
21 testimony is not subject to cross with the questions
22 that have come up in this proceeding.

1 Clearly, in that proceeding he was not
2 crossed about his position in such a manner referred
3 upon, so that it could be clear to this Court and to
4 everyone present what his analysis was.

5 MS. GALIOTO: Your Honor, the exact same issue
6 was at issue in the generic proceeding order as is at
7 issue in this case. It's the exact same issue.

8 He testified, under oath, subject to
9 cross-examination, privity to the parties in that
10 case.

11 For him to come on the stand today and
12 say something other than what is in his testimony in
13 that proceeding is literally changing his testimony
14 to suit Staff's benefit. That's so improper, I -- it
15 should not be allowed.

16 JUDGE HAYNES: Okay. I'm going to deny your
17 request to call Mr. Struck today.

18 The witness was cross-examined on --
19 Ms. Hathhorn was cross-examined on her understanding
20 of Staff's position from the generic proceeding, and
21 I think that the cross-examination speaks for itself.

22 And since there's some concern that,

1 perhaps, Mr. Struck's position isn't clear, we're
2 going to go back to his testimony, which we did not
3 mark at the time, but I'm going to mark today as
4 Nicor Cross-Exhibit 2, and if anything was taken out
5 of context by the Nicor attorney, the testimony, I
6 assume, will explain that.

7 So the direct testimony of Scott
8 Struck, Nicor Cross-Exhibit 2 is admitted into the
9 record.

10 (Whereupon, Nicor Cross Exhibit
11 No. 2 was admitted into
12 evidence.)

13 MS. VON QUALEN: Please note my objection for
14 the record. I think that is very unfair and it
15 precludes Staff from having the opportunity to show
16 its position, which I think we have every right to
17 do.

18 JUDGE HAYNES: And Mr. Struck could have been
19 the witness on this case, so I think that at that
20 point --

21 MS. VON QUALEN: I appreciate that.

22 And I truly wish that Nicor would have

1 seen fit to show what their case was during their
2 rebuttal testimony, in which case Staff would have,
3 as would normally been done, ask Mr. Struck to
4 testify in their rebuttal testimony.

5 As it is, Nicor waited until after all
6 testimony was filed in its cross-examination and
7 brought up additional issues, having done so in
8 surrebuttal and cross-examination, thereby precluding
9 Staff from providing a full and complete record to
10 the Commission.

11 JUDGE HAYNES: The testimony at issue and the
12 motion to strike has nothing to do with
13 Ms. Hathhorn's understanding of the generic order of
14 the generic proceeding and understanding Staff's
15 position in that.

16 MS. VON QUALEN: I agree with that completely.
17 It is simply that it shows the exact, same strategy
18 as this form of cross --

19 MS. GALIOTO: Your Honor, I have to respond to
20 that because of the allegations that underlays those
21 statements.

22 Nicor took the position in each piece

1 of testimony, in each the rebuttal and surrebuttal
2 testimony, that Staff's understanding of the generic
3 proceeding order and that Staff and Nicor's position
4 in that case was wrong. We have said that in
5 testimony. This is nothing new.

6 Staff is not blindsided. We have been
7 upfront. We think they have an incorrect
8 interpretation of that order. Ours is different.

9 JUDGE HAYNES: Just to ensure we have a full
10 record of Mr. Struck's position in the generic
11 proceeding, I'm going to admit the portion of the
12 transcript that Ms. Galioto referred to yesterday,
13 and that is going to be marked as Nicor
14 Cross-Exhibit 3.

15 (Whereupon, Nicor Cross Exhibit
16 No. 3 was admitted into
17 evidence.)

18 JUDGE HAYNES: I assume the only thing left to
19 talk about is a briefing schedule?

20 MS. GALIOTO: I think that we did have a
21 briefing schedule on file. I believe that March 1st
22 was the date for our initial brief. I don't know

1 what it was for our reply.

2 THE WITNESS: March 15th.

3 MS. GALIOTO: Can we change the date for the
4 reply brief? I'm actually going to be out of town
5 in the middle of March, and I'm sort of wondering if
6 we can do a month for the initial and a month for the
7 reply. This case has dragged out for quite some
8 time, so I don't think we are in any rush to speed
9 the briefing schedule along.

10 JUDGE HAYNES: Are you proposing March 2nd
11 and --

12 MS. GALIOTO: Maybe April 2nd?

13 JUDGE HAYNES: Is that acceptable to Staff,
14 March 2nd and March 30th?

15 MS. VON QUALEN: Yes.

16 JUDGE HAYNES: It's four weeks and four weeks.

17 Is there anything else?

18 Hearing nothing, the record is marked
19 heard and taken.

20 Thank you.

21 MS. VON QUALEN: Thank you.

22 MS. GALIOTO: Thank you.

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